

1 **BOARD BILL # 23 INTRODUCED BY ALDERMAN STEPHEN GREGALI**

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3 An ordinance pertaining to smoking in food and beverage establishments; requiring the
4 owner of any food and beverage establishment located in the City of St. Louis to
5 designate his/her establishment as smoke-free, smoke-restricted, or smoking; establishing
6 rules and regulations for such establishments based upon the designation; containing a
7 penalty clause, severability clause and an emergency clause.

8 **WHEREAS**, environmental tobacco smoke is a leading public health problem in the City
9 of St. Louis, Missouri and throughout the United States; and

10 **WHEREAS**, the use of lighted smoking products inherently creates a health hazard of
11 second-hand smoke, which affects the public health, indoor environment, and the
12 enjoyment of public places; and

13 **WHEREAS**, there exists conclusive evidence that environmental tobacco smoke causes
14 cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies,
15 and irritations to the eyes, ears, nose, and throats of both smokers and non-smokers; and

16 **WHEREAS**, environmental tobacco smoke, which includes both exhaled and side
17 stream smoke from burning cigarettes, causes the deaths of 53,000 Americans each year;
18 and

19 **WHEREAS**, the harmful effects of environmental tobacco smoke are not confined to
20 smokers but also cause severe discomfort and illness to nonsmokers; and

21 **WHEREAS**, food and beverage establishments have been shown to be locations of
22 significant exposure to environmental tobacco smoke by the citizens of the City of St.
23 Louis; and

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1 **WHEREAS**, both the Public Health Services National Toxicology Program and the
2 World Health Organizations' International Agency for Research on Cancer identify
3 environmental tobacco smoke as a human Class A carcinogen and state that there is no
4 safe level of exposure; and,
5 **WHEREAS**, there are laws, ordinances and regulations in place that protect workers
6 from other environmental hazards, including Class A carcinogens such as asbestos,
7 arsenic and benzene, but none which regulate exposure to environmental tobacco smoke;
8 and
9 **WHEREAS**, the United States Surgeon General, the American Cancer Society and the
10 American Lung Association have concluded that involuntary smoking is a cause of
11 disease, including lung cancer in non-smokers,

12 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS,**

13 **SECTION ONE. Definitions**

14 Business Agent – An individual who has been designated by the owner or operator of any
15 establishment to be the manager or otherwise in charge of said establishment.

16 Employee – Any individual who performs services for an employer in exchange for
17 wages or profits.

18 Enclosed – A space, structure, facility or any portion thereof, bounded by walls with or
19 without windows, continuous from floor to ceiling or deck above and served by heating,
20 ventilation, and air conditioning (HVAC) system (s), and through which air can circulate
21 from one portion to another, including, but not limited to offices, rooms, hallways,
22 customer service areas, foyers, common areas, waiting areas, restrooms, lounges, and
23 eating areas.

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1 Food and /or beverage establishment – Any establishment which is required to have a
2 business license from the City of St. Louis, and which provides food and/or beverage
3 under a permit from the Health Department and/or an “on premises” liquor license.

4 Smoking – Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or
5 other lighted tobacco product in any manner or form.

6 **SECTION TWO – Designating Food and Beverage Establishments as SMOKE-**
7 **FREE, SMOKE-RESTRICTED, or SMOKING.**

8 It shall be the responsibility of the owner of the food and beverage establishment to
9 designate his/her establishment as one of the following: (1) SMOKE-FREE, (2)
10 SMOKE-RESTRICTED, OR (3) SMOKING.

11 For establishments designated as SMOKE-FREE, no smoking by any persons,
12 employees, or patrons, at any time will be allowed in any part of the enclosed areas of
13 establishment, except as noted in paragraph 11 below.

14 For establishments designated as SMOKE-FREE, signage shall be posted clearly and
15 conspicuously on or adjacent to each and every door to the establishment that is generally
16 accessed by patrons or employees and shall be plainly visible from the exterior of the
17 building to persons entering through the door.

18 For establishments designated as SMOKE-RESTRICTED, smoking shall be allowed
19 within the establishment while protecting non-smokers from the effects of secondhand
20 smoke to the extent possible.

21 For establishments designated as SMOKE-RESTRICTED, signage shall be posted
22 conspicuously on or adjacent to each and every door to the establishment that is generally

1 accessed by patrons or employees and shall be plainly visible from the exterior of the
2 building to persons entering through the door.

3 For establishments designated as SMOKING-RESTRICTED, smoking shall only be
4 allowed in completely enclosed rooms where the air is: separately ventilated to the
5 outside and not mixed with air circulating in any non-smoking area, or sufficiently
6 filtered either mechanically or electronically to remove substantially all of the smoke and
7 carcinogenic matter in the air before it is mixed with air circulating in any non-smoking
8 area; and not require non-smokers to pass through any smoking area to reach non-
9 smoking areas or common facilities such as restrooms, telephones, or lounges; and post
10 appropriate signage designating smoking and non-smoking sections.

11 For establishments designated as SMOKING, smoking by patrons shall be allowed
12 throughout all enclosed areas generally occupied by patrons.

13 For establishments designated as SMOKING, signage shall be posted clearly and
14 conspicuously on or adjacent to each and every door to the establishment that is generally
15 accessed by patrons or employees and shall be plainly visible from the exterior of the
16 building to persons entering through the door.

17 For establishments designated as SMOKING, patrons shall not be offered a choice of a
18 non-smoking section; if ashtrays are made available/distributed for patrons they shall be
19 made available/distributed throughout all enclosed areas generally occupied by patrons.

20 Two or more food and beverage establishments operating under separate permits and/or
21 licenses shall not be directly connected by any interior means of access including but not
22 limited to doorways, windows, service bars or service windows, unless each has the same
23 designation, either SMOKE-FREE, SMOKING-RESTRICTED, or SMOKING. If

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1 SMOKING is chosen for any but not all of the establishments, each one for which
2 SMOKING is chosen must have HVAC system (s) which serve only that area, and the
3 HVAC system shall be balanced so as to keep a 0% pressure environment in all
4 doorways and windows, and be physically separated in its entirety by walls which extend
5 from floor to ceiling or deck above and any doors to that area must be self-closing.
6 Food and beverage establishments may offer employees a separate smoking lounge if it is
7 physically separated in its entirety by walls which extend from floor to ceiling or deck
8 above, is served by HVAC system (s) which serves only that area, and the HVAC system
9 shall be balanced so as to keep a 9% pressure environment in all doorways and windows,
10 has a self-closing door and is available only to employees of the establishment.
11 Smoking may be permitted in hotel, motel, inn, bed and breakfast and lodging rooms that
12 are rented to guests designated as “smoking rooms.” A facility which offers such rooms
13 to guests may add additional language to the required signage after the statement
14 “Smoking is prohibited throughout this facility at all times” stating “Lodging rooms are
15 available for guests who smoke” in matching letters.
16 Food and beverage establishments will be listed in a listing by status (SMOKE-FREE,
17 SMOKE-RESTRICTED, or SMOKING, to be published annually by the City of St.
18 Louis Health Department no later than November 1, 2005; the first listing will be
19 completed by December 1, 2005; the listing will be available to the public from the
20 Office of the City Register and shall also be available on the City’s web site.

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1 **SECTION THREE: Violations**

2 It shall be the responsibility of the owner, business agent, manager, or other person
3 having control of the food and beverage establishment to insure compliance with all
4 sections of this ordinance pertaining to his/her place of business. A violator of this
5 ordinance may receive:

6 First violation – one hundred dollar (\$100.00) fine.

7 Second violation within 24 months of the first violation – five hundred dollar (\$500.00)
8 fine

9 Three or more violations within 24 months of the second or current violation – five
10 hundred dollar (\$500.00) fine for each violation.

11 No provision, clause or sentence of this section of this ordinance shall be interpreted as
12 prohibiting the City of St. Louis from suspending or revoking any license or permit
13 issued by and within the jurisdiction of the City of St. Louis for repeated violations of
14 this ordinance.

15 If the owner, business agent, manager or other person in charge of such food and
16 beverage establishment attempts to enforce this ordinance and a patron violates it
17 (smokes in a SMOKE-FREE establishment) the owner, business agent, manager or other
18 person in charge shall not be deemed to be in violation of this ordinance, and the patron
19 shall be subject to fines as follows:

20 First violation – one hundred dollar (\$100.00) fine.

21 Second violation within 24 months of the first – five hundred dollar (\$500.00)
22 fine.

1 Three or more violations within 24 months of the second or current violation
2 – Five hundred dollar (\$500.00) fine for each violation.

3 Each calendar day that an owner, business agent, manager, or other person in charge of a
4 food and beverage establishment operates in violation of any provision of this ordinance
5 shall be deemed a separate violation; each calendar day that a patron violates this
6 ordinance (i.e. smokes in a SMOKE-FREE establishment) shall be deemed a separate
7 violation.

8 **SECTION FOUR. Enforcement**

9 Authority to enforce this ordinance shall be held by the Health Commissioner or the
10 Commissioner's designees.

11 2. An owner, business agent, manager, operator, or employee of an establishment
12 regulated by this ordinance shall inform persons violating this ordinance of the
13 appropriate provisions thereof.

14 **SECTION FIVE. Non-retaliation**

15 No owner, business agent, manager or any other person having control of a food and
16 beverage establishment shall discharge, refuse to hire, refuse to serve or in any manner
17 retaliate or take any adverse personnel action or other adverse action against any
18 employee, applicant, customer, or person because such employee, applicant, customer or
19 person takes any action in furtherance of the enforcement of this ordinance or exercises
20 any right conferred by this ordinance.

1 **SECTION SIX. Severability**

2 If any provision, clause, sentence, paragraph or word of this ordinance or the application
3 thereof to any person, entity or circumstances shall be held invalid, such invalidity shall
4 not affect the other provisions of this ordinance which can be given effect without the
5 invalid provisions or application, and to this end the provisions of this ordinance are
6 declared severable.

7 **SECTION SEVEN. Effective Date**

8 Food and beverage establishments legally permitted and/or licensed shall designate their
9 status by notifying the City's Health Commissioner in writing by November 1, 2005, and
10 annually thereafter at the time of renewing their business license. Food and beverage
11 establishments shall implement the provisions of this ordinance by January 1, 2006.

12 Should an establishment opt to change its status prior to the regular annual renewal date
13 for its business license, it will be required to purchase another business license at the
14 same cost as the most recent regular annual one, in addition to any and all regular annual
15 purchases

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